



## The Northwest Clearing House Association

"Dedicated to providing members with expertise and assistance to assure their growing, competitive and secure participation in payment systems."

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November 16, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**Re; Docket No. R-1210; Regulation E – Electronic Funds Transfers**

Dear Ms. Johnson:

The ACH Operations Committee of the Northwest Clearing House Association (NWCHA) respectfully submits this comment to the Federal Reserve Board on the proposed changes to Regulation E and its Official Staff Interpretation. We agree that the proposed changes will provide greater consumer protection and will clarify ECK Transactions and Payroll Cards for Financial Institutions. However, we would appreciate some clarifications regarding specific proposed changes. Below are our comments on the specific areas of concern.

### **Electronic Check Conversion/ 3(c) Exclusions From Coverage**

Comment 3(c)(1) – 1, would be revised to clarify that a consumer authorizes a merchant or other payee to electronically debit a fee for insufficient funds from the consumer's account when the consumer goes forward with the transaction after receiving notice that the fee will be collected electronically.

Notice equals authorization would violate specific *ACH Operating Rules*, (**Article Two – Origination of Entries, Subsection 2.1.2 Receivers Authorization and Agreement** "... in the case of a debit entry to a consumer account, the authorization must be in writing and signed or similarly authenticated"). We believe this rule affords greater consumer protection, **Section 919 – Relation to State Laws** of the *Electronic Funds Transfer Act* states, "...A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title". We believe this title should include the Operating Rules of payment networks and other applicable laws. This change, if made, could then be included in the Official Commentary to clarify that Originators of these transactions would still need to comply with the *ACH Operating Rules* if they wish to originate this type of transaction within the ACH Network.

### **Payroll Cards/Existing regulatory language under 205.4(e)**

Existing regulatory language under 205.4 (e) addresses the regulatory framework for financial institutions that provide EFT services jointly. The parties may contract among themselves to comply with the regulation.

Northwest

**NWCHA**

Payments

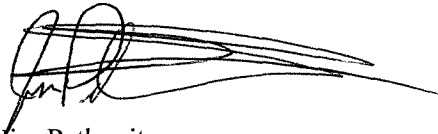
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Because of the unique nature of payroll cards and the fact that many of the consumers who benefit from their availability are "un-banked" or have been determined to be "un-bankable" by traditional financial institutions, regulation E compliance should be the responsibility of the party who has made the decision to open the "account". We believe the provision to contract among the parties, the compliance requirements of Regulation E must be clearly and predominately stated in the Official Staff Interpretation. We fully support the Federal Reserve Board's efforts to ensure consumers are afforded the protection provided by Regulation E when they receive a payroll card. We feel this protection is vital to the success of this financial product and a necessary change to the scope of Regulation E.

NWCHA and the ACH Operations Committee appreciate the opportunity to comment on this proposal. If you have any questions regarding our comments, I may be reached at 206-622-7846, or by e-mail at: [Petkovits@nwcha.org](mailto:Petkovits@nwcha.org)

Sincerely,



Jim Petkovits  
ACH Education & Training Manager  
On behalf of the NWCHA ACH Operations Committee.

**About NWCHA and the ACH Operations Committee:** NWCHA is the ACH Regional Payment Association for Washington State and Alaska, NWCHA is a dues paying member of NACHA – The Electronic Payment Association. The ACH Operations Committee is comprised of Accredited ACH Professionals (AAPs) and associates from several members of NWCHA, representing ODFIs, RDFIs, Originators and Receivers.

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